

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSH BRUECKNER

Plaintiff,

-against-

20-CV-3323 (JSR)

YOU CAN BEAM LLC,

Defendant

DEFENDANT'S RULE 56.1 RESPONSE

Defendant You Can Beam LLC, by its attorney Mark J. McCarthy, respectfully submits the following in Response to Plaintiff's Statement of Undisputed Material Facts dated February 12,2021.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted to the extent the Agreement identified an address for Plaintiff in Romeo, MI but controverts any claim that was the only address provided Defendant. (Saks Dec. Par. 12).
5. Controverted. (Yewdell Dec. Par. 6).
6. Admitted.
7. Controverted. (Yewdell Dec. Par. 6).
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

12. Admitted.

13. Admitted.

14. Controverted. The discussion of Plaintiff's financial situation in the March 27, 2020 telephone call revolved around Plaintiff's efforts to salvage an arrangement with Plaintiff given his previous refusal to abide by his obligations under the Agreement. (Yewdell Dec. Par. 11-13; Rosen Dec. Exh. "B")

15. Controverted to the extent the March 2, 2020 was transmitted to an address provided by Plaintiff. (Saks Dec. Par. 11-12; Brueckner Dec. Exh. "F").

16. Admitted.

17. Defendant has no knowledge as to Plaintiff's residence but Admits the Agreement at issue presents an address for him in Romeo, MI.

18. Admitted.

Defendant further submits the following Statements of Material Facts as to which it is contended that there exists a genuine issue to be tried.

1. The Agreement at issue provides for termination immediately by Defendant if Plaintiff "refuses to or is unable to perform the Services or is in breach of any material provision of this Agreement and fails to cure such refusal, failure or breach within ten (10) days of notice by the Company". There is no requirement of written notice in this sentence. Defendant contends it provided written notice to Plaintiff of his material breaches, as well as giving notice in multiple telephone conversations. (Solotaroff Dec. Exh "A" Par. 13; Yewdell Dec. Par. 11)

The giving of notice is in sharp dispute in the motion papers.

2. The Agreement at issue provides for "written notice" to be given Plaintiff when required "addressed to Contractor at the address shown below or such other address as Contractor of which Company may notify Contractor." Solotaroff Dec. Par. 13. Defendant contends the address to which its initial notice of breach was sent was provided to it by Plaintiff, while Plaintiff does not address the issue in his papers. (Saks Dec. Par. 11)

3. Plaintiff does not declare he properly fulfilled all his obligations under the Agreement as detailed in the Agreement, Exh "A", pg. 5, and recognizes he was not adding his "BEAM link

and coupon code to all youtube (sic) videos" as required. Brueckner Dec., Par. 7). The extent to which his non-performance constituted material breach is an issue of fact.

Dated: March 3, 2021

McCarthy Law

/s/ Mark J. McCarthy

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